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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Trinity)

In re B. M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. B. M., Defendant and Appellant.	C061526 (Super. Ct. No. 08JU059)

Following a contested jurisdictional hearing on two petitions in this delinquency case, the juvenile court sustained allegations against B. M. (the minor) of two counts of battery and violation of probation.[1] At a dispositional hearing, the court declared the minor a ward of the court and ordered her to serve 58 days with 58 days of credit. The minor appeals,

[1] At the time of the jurisdictional hearing, the minor was already on probation as a ward of the court for committing commercial burglary in 2008.

contending there was insufficient evidence of willfulness and harmful or offensive contact to sustain one of the counts of battery. We conclude the evidence was sufficient and therefore will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

January 5, 2009, marked the beginning of the school year for the minor, who had recently returned home from juvenile hall. The minor's mother argued with the minor over the shirt she planned to wear to school that day. At the end of the argument, the minor's mother told the minor to go to her room, which she did. The minor then "snuck out" and smoked a cigarette outside. When the minor's mother found out the minor was smoking, she told the minor to go to her room again, which she did. Next, the minor argued with her brother. After the argument, the minor yelled at her mother to deal with him and threatened to stab him in the head. Although the minor never got a knife to follow through with the threat, she did rifle through a kitchen drawer and ponder out loud, "'Oh, which one should I use?'"[2]

Later that morning, the minor argued with her mother and sister near the top of the stairs about the minor having used her sister's lighter. Afraid she would fall down the stairs,

[2] Additional testimony regarding the knife incident came from Deputy Jeramy Ammon, the arresting officer. While searching the minor, Deputy Ammon asked her if she had anything sharp on her, to which she responded, "'No, I left the knife in the kitchen.'"

the minor's sister nudged the minor forward. In response, the minor turned around and struck her sister twice with her fist.

After that, the minor and her mother had a "stand up, push down" match for about one minute in the minor's bedroom. The minor tried to stand up from her bed several times, and her mother repeatedly pushed her back down onto the bed. Both the minor and her mother were angry and shouting at each other during this time. The minor's mother testified there was no physical contact between the minor and herself that morning other than the "stand up, push down." The minor's father, on the other hand, testified he saw the minor use a closed hand in a "dragging push" against her mother's left shoulder during one attempt to stand up, but he did not think the minor's mother reacted to the contact. When the minor's father saw the contact, he called the police because he believed "[i]t was getting out of control . . . [and he] was afraid that it would just degenerate into something really, really bad."

On January 7, 2009, a juvenile wardship petition was filed against the minor alleging two counts of battery, one on her sister and one on her mother. As previously noted, the juvenile court sustained the petition as to both counts.

DISCUSSION

On appeal, the minor contends the evidence was insufficient to sustain the battery count involving her mother as the victim. We disagree.

I

Standard Of Review

"When the sufficiency of the evidence is challenged on appeal, we apply the familiar substantial evidence rule. We review the whole record in a light most favorable to the judgment to determine whether it contains substantial evidence, i.e., evidence that is credible and of solid value, from which a rational trier of fact could find beyond a reasonable doubt that the accused committed the offense." (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 859.) "An appellate court must accept logical inferences that the [finder of fact] might have drawn from the circumstantial evidence." (*People v. Maury* (2003) 30 Cal.4th 342, 396.)

"[T]he defendant must present his case to us consistently with the substantial evidence standard of review. . . . If the defendant fails to present us with all the relevant evidence, or fails to present that evidence in the light most favorable to the People, then he cannot carry his burden of showing the evidence was insufficient because support for the jury's verdict may lie in the evidence he ignores." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1574.)

Because the minor presents the evidence in the light most favorable to her position, rather than the People's, she fails to meet her burden here. In any event, we conclude the evidence was sufficient.

II

Substantial Evidence Supported The Court's Finding Of Battery

The minor contends there was insufficient evidence to support a finding of intent to commit battery against her mother. We disagree.

Battery is defined as "any willful and unlawful use of force or violence upon the person of another." (Pen. Code, § 242.) As a general intent crime (*People v. Lara* (1996) 44 Cal.App.4th 102, 107), "the required mental state [for battery] entails only an intent to do the act that causes the harm . . ." (*People v. Davis* (1995) 10 Cal.4th 463, 518, fn. 15). "Willfully" does not require that the defendant have an evil intent; it implies only that the defendant "knows what he is doing intends to do what he is doing and is a free agent." (*In re Trombley* (1948) 31 Cal.2d 801, 807.)

It was reasonable for the court to find intent here based on the testimony about the circumstances surrounding the contact and the testimony that the father called the police in response to the contact. The minor argued with her family members the entire morning of January 5. The minor also threatened to stab her brother in the head and even struck her sister twice that morning. After the arguments had escalated, the minor and her mother got into a physical "stand up, push down" match, during which the minor used a closed hand in a "dragging push" against her mother's shoulder. Furthermore, the minor's father testified that "[i]t was getting out of control . . . [and he]

was afraid that it would just degenerate into something really, really bad."

The minor also contends there was insufficient evidence to support a finding of harmful or offensive contact because the minor's mother testified she "didn't even feel it." We disagree.

"'It has long been established, both in tort and criminal law, that "the least-touching" may constitute battery. In other words, *force* against the person is enough, it need not be violent or severe, it need not cause bodily harm or even pain, and it need not leave any mark.'" (*People v. Rocha* (1971) 3 Cal.3d 893, 899, fn. 12.)

There is substantial evidence to support a finding the contact the minor made with her mother was a battery. Using a closed hand to effect a dragging push against another's shoulder during a "stand up, push down" match could be found to be an offense. More importantly, the minor's father testified that he called the police in response to the hit because "[i]t was getting out of control . . . [and he] was afraid that it would just degenerate into something really, really bad." Based on this evidence, it was reasonable for the court to find the contact occurred, was offensive, and constituted "force or violence" within the meaning of the statute.

The only authority minor cites to support her argument is *People v. Warner* (2006) 39 Cal.4th 548, which is unavailing. In *Warner*, the court stated in the context of child sexual assault that "a touching in the abstract, which involves no

definite or specific sexual act, no penetration, and not even necessarily an awareness by the victim that he or she was touched" is not a type of touching that the court will always find harmful or improper with only general intent. (*Id.* at p. 558.) *Warner* provides no guidance here because in spite of the mother's trial testimony, there was evidence that there was contact.

The minor also fails to view the evidence in the light most favorable to the judgment by discussing only her mother's trial testimony that there was no contact and her father's trial testimony that he did not "think" her mother reacted to the contact. Such testimony is not material for our purposes as there is contradictory evidence at the time of the incident that there *was* contact sufficient to warrant a 911 call, on which the fact finder could rely. (See *People v. Robillard* (1960) 55 Cal.2d 88, 93 ["If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment"].) The court could have found the minor's parents' testimony at trial was biased, based on their interest in minimizing the minor's culpability. Under these circumstances, the court was under no obligation to believe the seemingly contrary testimony and could have reasonably concluded the mother was, in fact, subjected to a battery.

For the reasons stated above, there was substantial evidence from which a rational trier of fact could have found

beyond a reasonable doubt the minor committed battery against her mother.

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

SCOTLAND, P. J.

NICHOLSON, J.